were taken to the office of the health officer where they were searched. On the person of the second appellant the $50 marked notes were found but none was found in the possession of the first appellant.

Several grounds of appeal were urged on behalf of the first appellant, the material ones being that the learned president failed to consider whether prosecution witnesses Nos. 5, 7 and 8 and appellant No. 2 were accomplices and if they were, the learned president had failed to take into account the necessary caution in accepting such evidence; and that the learned president erred in law in considering the statement of the second appellant as evidence against the first appellant.

The judgment of the learned president, in addition to being brief generally, is bare on this point. There is nothing in the judgment to indicate that the learned president had applied his mind to determine whether or not any of the witnesses were accomplices within the meaning of the word and, if so, whether there was any desirability for corroboration of their evidence. It is also unfortunate that the learned president has apparently taken into consideration the statement of the second appellant as evidence against the first when he said:—

"It is manifest from.....the voluntary statements that both accused were involved in this transaction."

The cautioned statement of the first appellant amounted to a complete denial of the charge but the statement of the second appellant which amounted to a confession also implicated the first appellant.

It is well-settled that a confession is only evidence against the maker thereof and as a rule of prudence the confession of an accused insofar as it implicates the co-accused has little weight.

As regards the appeal of the second appellant, apart from the evidence of the witnesses, the main evidence was the cautioned statement made by the second appellant immediately after the arrest. In this statement he admitted that the $50 marked notes were found on him after he has seen a Chinese in the office lavatory. In regard to this appellant, the failure of the learned president to apply his mind as above and to apply the necessary caution is immaterial. There is a presumption of law under such circumstances and that presumption has not been rebutted.

In the circumstances , the appeal of the first appellant is allowed and the conviction and sentence is hereby quashed and, subject to any direction of the Public Prosecutor to the contrary, a retrial is hereby ordered. The appeal of the second appellant is dismissed.

Appeal of 1st appellant allowed.
Appeal of 2nd appellant dismissed.

Solicitors: *Rajendra & Teik Ee; Chooi Mun Sou.*

UNITED INVESTMENT & FINANCE LTD. v. UNIVERSAL SERVICE AGENCY

[O.C.J. (Choor Singh J.) June 28, 1965]

[Singapore — Suit No. 921 of 1963]

Practice and Procedure — Execution on judgment — Payment of full amount of judgment and costs into court —Whether precludes execution on judgment — R.C.S. 1934, O. LVIII r. 1(3)(f).

The plaintiffs obtained judgment against the defendants for the sum of $1,832.13 and costs. The defendants instead of paying the money to the plaintiffs paid the amounts due into court as they intended to appeal against the judgment. The plaintiffs proceeded to levy execution and the defendants' property was seized under a writ of seizure and sale. The defendants thereupon applied by summons in chambers for the writ of seizure and sale to be set aside and the property seized to be released on the ground that the writ was void because it was issued after the plaintiffs had received notice of the payment into court by the defendants of the full amount of the judgment and costs.

Held: Order LVIII rule 1(3)(f) does not authorise a judgment debtor to pay into court the amount due on the judgment. Such payment can only be made in pursuance to an order of court. As there was no such order authorising payment into court or staying execution on the judgment, the plaintiffs were well within their rights in levying execution on the defendants' property to enforce payment of the judgment.

Case referred to:—

(1) *Clissold* v. *Cratchley* [1910] 2 K.B. 244.

CIVIL SUIT.

John Chor-Yong Tan for the plaintiffs.

J. L. R. Pillai for the defendants.

Choor Singh J.: In this action judgment was given on the 26th March 1965 in favour of the plaintiffs against the defendants in the sum of $1,832.13 and costs, which were taxed at $1,911.95. The plaintiffs proceeded to levy execution on the judgment and the defendants' property was seized under a writ of seizure and sale. The defendants applied by summons in chambers for the writ of seizure and sale to be set aside and the property seized to be released on the ground that the writ of seizure and sale was void because it was issued after the plaintiffs had received notice of the payment into court by the defendants of the full amount of the judgment and the taxed bill of costs.

After hearing counsel for both parties, I dismissed the defendants' application with costs. The defendants applied for leave to argue the matter further in open court. This application

was granted. I heard further argument in open court but saw no reason to revise the order I had already made. As the defendants have indicated that they desire to appeal against my decision, I now proceed to give my reasons for it.

The facts are not in dispute and they are as follows. On the 2nd April 1965 the plaintiffs' solicitors wrote to the defendants' solicitors demanding payment of the amount due on the judgment. On the 7th April the defendants' solicitors wrote to the plaintiffs' solicitors informing them that they had received instructions to appeal against the judgment and that they would forward the amount of the judgment to them on their undertaking to refund the said sum should their clients' appeal be allowed. The plaintiffs' solicitors replied on the 9th April, informing the defendants' solicitors that their clients were not prepared to give any undertaking, and that, if the judgment debt was not paid to them by the 13th of April, they would levy execution without further notice. On the 14th April, the defendants' solicitors wrote to the plaintiffs' solicitors that as the plaintiffs were not prepared to give any undertaking as required in their letter of the 7th April, their instructions were to pay the amount of the judgment into court pending appeal and they were therefore making the necessary application to pay the amount into court. The plaintiffs' solicitors replied to this letter on the 16th April and informed the defendants' solicitors that any application on the part of the defendants to pay the judgment debt into court pending appeal would be strongly resisted by their clients, and that there was no question of their clients not being able to refund the judgment debt in the event of the defendants' appeal being successful.

On the 19th April, the defendants' solicitors paid into court the sum of $1,832.13 pursuant to Order LVIII rule 1(3)(f) and on the same day served the plaintiffs' solicitors with notice in the following terms:—

"Take notice that we have this day as solicitors of Universal Service Agency the abovenamed defendants paid into court $1,832.13 being the amount of judgment pursuant to judgment dated the 28th day of March 1965 and entered herein on the 7th day of April 1965."

The money was paid into court by means of a direction for payment into court obtained from the registrar and it was as follows:—

"The Accountant-General, Singapore, is hereby directed to receive the sum of dollars one thousand eight hundred and thirty-two and cents thirteen only ($1,832.13) being the amount paid in by Messrs. Pillai & Co., the solicitors for the abovenamed defendants being the amount of judgment pursuant to judgment dated the 26th day of March, 1965, and entered herein on the 7th day of April, 1965."

The judgment was in the following terms:—

"*26th day of March 1965*

THIS ACTION coming on for trial before the Honourable Mr. Justice Ambrose on the 18th September 1964, and on the 26th March 1965, in the presence of counsel for the plaintiffs and for the defendants AND UPON reading the pleadings AND UPON hearing the evidence adduced and what was alleged by counsel on both sides THIS COURT DOTH ADJUDGE that the plaintiffs do recover against the defendants the sum of $1,832.13 AND THIS COURT DOTH ORDER that the costs of and incidental to this action be taxed and paid by the defendants to the plaintiffs."

It is to be noted that the judgment does not direct the defendants to pay the amount of the judgment into court.

On the 12th May the plaintiffs' solicitors wrote to the defendants' solicitors as follows:—

"Our party and party bill of costs was yesterday taxed and allowed by the registrar in the sum of $1,911.95 inclusive of stamp fees.

We also refer to the judgment debt of $1,832.13 which still remains unpaid.

We are instructed by our clients to give your clients final notice that unless payment of the judgment debt and the taxed bill of costs amounting to $3,744.08 is made to us within 4 days from the date hereof, execution will be levied against your clients without further notice."

The defendants' solicitors replied on the 18th May as follows:—

"We are in receipt of your letter dated the 12th instant.

Please let us know the amount allowed by the registrar on taxation and the amount of taxing and allocatur fees payable thereon.

With regard to paragraph 2 of your letter under reply we have to bring to your notice that on the 19th April, 1965 we have given you a notice that the judgment debt of $1,832.13 was paid into court."

The plaintiffs' solicitors replied to this letter on the 19th May in the following terms:—

"We are in receipt of your letter of the 18th May, 1965.

With regard to paragraph 2 of your letter, the amount allowed by the registrar on taxation was $1,868.95 together with a further sum of $43.00 being allocatur and taxing fee making a total of $1,911.95.

With regard to the 3rd paragraph of your letter, may we know under what provisions was the money paid into court?"

On the 20th May, the defendants' solicitors paid into court the amount of the taxed costs, again by means of a direction from the registrar which was as follows:—

"The Accountant-General, Singapore, is hereby directed to receive the sum of dollars one thousand nine hundred and eleven and cents ninety-five only ($1,911.95) paid in by Messrs. Pillai & Co., the solicitors for the abovenamed appellants/defendants being the amount of the taxed bill of costs of the abovenamed respondent/plaintiffs pursuant to the registrar's certificate herein."

Notice of this payment into court was given to the plaintiffs' solicitors on the same day. On the 20th May 1965 the plaintiffs' solicitors took out a writ of seizure and sale and the defendants' property was seized on the 22nd May 1965.

Counsel for the defendants stated that the

money was paid into court in satisfaction of the judgment pursuant to Order LVIII rule 1(3)(f) which he claimed gave the defendants authority to do so. Rule 1(3)(f) of Order LVIII reads as follows:—

> 1(3) When money is to be lodged under Orders XIV and XXIII, or as security for costs, or in satisfaction or part satisfaction of a judgment or order, the direction shall contain a statement of such of the following circumstances as are applicable:—
>
> (f) paid in on account of the judgment or order obtained by (name of party).
>
> .....

In my view counsel for the defendants has misconstrued the provisions of Order LVIII. This Order merely lays down the procedure which has to be followed when money is to be paid into court by a party and money can only be paid into court either pursuant to the Rules of the Supreme Court or pursuant to an order of court. There is no provision in the Rules of the Supreme Court for a judgment debtor to pay into court the amount due on the judgment; such payment can only be made in pursuance of an order of court directing or authorising the judgment debtor to pay into court the sum due on the judgment. If, for some reason, it is necessary for a judgment debtor to pay into court the money due on the judgment, it is incumbent upon him to obtain an order of court authorising him to do so. In my opinion Order LVIII rule 1(3)(f) does not authorise a judgment debtor to pay into court the amount due on the judgment.

In this case there was no order of court authorising the defendant to pay into court the amount due on the judgment and the payment into court was therefore without authority and improper. The plaintiffs were not obliged to take the money out of court in satisfaction of their judgment. They could, no doubt, do so if they so wished but they were under no legal obligation to do so and could not be compelled to do so. If it were otherwise, every judgment debtor could delay payment to the judgment creditor by paying the amount of the judgment debt into court.

Counsel for the defendants submitted that when the amount of the judgment was paid into court, the judgment was satisfied and was dead; that execution on the judgment could not be levied thereafter; that it was wrong of the plaintiffs to levy execution knowing that the full amount of the judgment had been paid into court; that under the circumstances the writ of seizure and sale was void; that the execution levied on the property of the defendants was illegal and should therefore be removed forthwith. Counsel relied on the following passage in the judgment of Vaughan Williams L.J. in *Clissold* v. *Cratchley*,[1] at page 249:—

> "....It is suggested that, when execution was issued, the judgment against the plaintiff was still in force, notwithstanding that the total amount of debt and costs ordered by it to be paid by the plaintiff had been in fact paid, and a receipt had been given for it by a person authorised to receive the money and give the receipt. It is said that, notwithstanding that fact, there was a still existing judgment which would support the writ of execution, and which was still in force. But common sense, wholly apart from authority, tells one that, when the total amount has been paid which is ordered by a judgment to be paid, the judgment ought no longer to be of any force or effect. But, as it has been argued that a writ of execution is good so long as the judgment under which the moneys have been paid has not in law been set aside, it is convenient to show the authority for the proposition that, when the total amount of a judgment debt has been paid, the judgment ceases to be of any avail. In *Tebbutt* v. *Holt* (1844) 1 Car. & K. 280, at p. 289, Parke B. said, 'The law also is that, if the debt and costs are paid or satisfied, the judgment is at an end'. This judgment is at an end. And in *Bullen and Leake's* Precedents, 3rd ed. at p. 353, I find this statement: 'An action will not lie for an arrest on final process upon a subsisting unsatisfied judgment (*Blanchenay* v. *Burt*, (1843) 4 Q.B. 707; *Huffer* v. *Allen*, L.R. 2 Ex. 15; 36 L.J. Ex. 17); but if the party arrested can get the judgment set aside for irregularity or on any other ground, or can show that the judgment was satisfied by payment or otherwise before the arrest, he may then maintain an action: the arrest in such case would in general support an action of trespass.' Under the circumstances it seems unnecessary to add anything. The cases on which reliance has been placed on behalf of the defendants are all instances of actions on the case for maliciously issuing process; not a single authority has been cited to justify the proposition that a satisfied judgment is nevertheless still an existing judgment for the purpose of issuing a writ of execution. If the judgment was not an existing judgment, it is manifest that the writ of execution issued under it was void *ab initio*, and that an entry has been made upon the plaintiff's premises under a writ void *ab initio*. The defendants are consequently liable in an action of trespass."

In my view counsel for the defendants had failed to appreciate the facts on which the decision in *Clissold* v. *Cratchley* is based. The facts in that case are clearly distinguishable from those in the present case. In that case a solicitor, who had an office in London with a branch office in the country, sued out in London a writ of *fi.fa.* upon an order for costs made in favour of his client against the plaintiff in the High Court, and indorsed the writ, in accordance with Order XLII., r. 16, of the Rules of the Supreme Court, with a direction to the sheriff to levy the amount of the debt. The debt had in fact been paid at the solicitor's country office, to a clerk having authority to receive it, on the same day as, and about three hours before, the writ of *fi.fa.* was sued out. Neither the solicitor nor his client knew of the payment of the debt. Execution having been levied on the plaintiff's goods, the solicitor was then informed that the debt had been paid, and he withdrew the execution. In an action against the solicitor and his client on the case to recover damages for improperly levying execution, and in the alternative for trespass, it was found that neither the client nor the solicitor who sued out the

writ acted maliciously. The Court of Appeal held that the defendants were liable in trespass, though in the absence of malice, they were not liable in an action on the case. It must be noted that in that case the debt was paid at the solicitor's country office to the solicitor's clerk, who had authority to receive the money and to give a receipt. In the present case the judgment debt was paid into court without the court's authority. Counsel for the defendants was unable to cite any authority for the proposition that an unauthorised payment into court of a judgment debt is complete satisfaction of the judgment. Indeed, I would be surprised if such authority could be found. The High Court is not a debt-collecting agency.

Every person to whom any sum of money is payable under a judgment is entitled to sue out a writ of seizure and sale to enforce payment thereof unless the court has ordered a stay of execution. In this case the defendants never applied for a stay of execution on the judgment. Counsel for the defendants argued that the defendants did not have to obtain a stay of execution because they were going to pay and had paid the full amount of the judgment and costs into court. In my view unless the full amount of the judgment debt is paid to the judgment creditor, a stay of execution has to be obtained by a judgment debtor if he wishes to avoid seizure of his property, and an unauthorised payment into court does not deprive the judgment creditor of his rights to seize the judgment debtor's property under Order XL rule 16. In this case there was no order of court staying execution on the judgment and the plaintiffs were well within their rights in levying execution on the defendants' property to enforce payment of the judgment. Under the circumstances it could not be said that the writ of seizure and sale was void or that the seizure was illegal. The seizure could not be removed unless the amount due under the writ of seizure and sale was paid to the sheriff or execution on the judgment was stayed by the court. The defendants were neither willing to pay the amount due to the sheriff nor willing to apply for a stay of execution. They took the stand that because they had paid the full amount of the judgment and costs into court, the seizure was wrong and should be removed forthwith. In my view their stand was clearly wrong in law and I had no alternative but to dismiss their application.

Application dismissed.

Solicitors: *J. Tan Chor-Yong & Co.; Pillai & Co.*

ER AH KIAT v. PUBLIC PROSECUTOR

[F.C. (Barakbah C.J. (Malaya), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) July 13, 1965]

[K.L. — Federal Court Criminal Appeal No. 32 of 1965]

Criminal trial — Statement of accused — Inquiry as to admissibility of statement — Evidence given in such inquiry by accused relating to facts of case and raising a defence — Accused subsequently in giving evidence referring to this evidence — Failure to consider such evidence — Conviction set aside.

The appellant was charged with having under his control a hand-grenade. He had made a statement to the police and at the trial the admissibility of this statement was challenged. On this issue the accused gave evidence on oath, in the course of which he explained how he came to know of the existence of the hand-grenade and where it was hidden. That evidence, if believed, established that the hand-grenade was not under his control but under the control of his friend. The statement was admitted and subsequently in his defence the appellant made an unsworn statement from the dock in the course of which he said "as to the facts of the hand-grenade I have already related to the court". The appellant was convicted and the trial judge in his judgment stated that he did not think he should consider the evidence given earlier by the appellant.

Held: (1) the statement of the accused amounted in effect to repeating to the court the explanation he had given in the witness box and therefore this explanation had become part of his defence as expounded in his unsworn statement;

(2) the failure to take the evidence into consideration amounted in effect to a failure to consider a defence which had been put forward and therefore the conviction must be set aside and a retrial ordered.

FEDERAL COURT.

T. T. Rajah for the appellant.

Mohamed Salleh bin Abbas (Deputy Public Prosecutor) for the respondent.

Wylie C.J. (Borneo) (delivering oral judgment): The appellant was convicted of having under his control one hand-grenade without lawful authority. He was tried before a judge alone and during the trial the admissibility of the statement he made was challenged and this issue was tried separately. On that issue, he gave evidence on oath. His evidence concerned principally the circumstances under which he gave the statement, and much of this statement was relevant only to that issue and not relevant on the issue of his guilt or innocence of the offence charged. However, in the course of his evidence he explained how he came to know of the existence of the hand-grenade and where it was hidden. That evidence, if true, established that the hand-grenade was not under his control but under the control of his friend who had merely told him of its existence and the location.

The statement was admitted and in the course of a written judgment on this issue, the judge came to the conclusion that the appellant in his evidence had told lies concerning the circumstances leading to the making of the statement. Quite properly the judge expressed